IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6852 OF 2004

Shri Kisan Hira Patil & Ors. ...Petitioners

Versus

The State of Maharashtra ...Respondent

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Ms.Nayana Thatte i/b Mr.S.M.Oak for Petitioners.

Mr.M.H.Solkar, A.G.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 26, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Solkar, A.G.P. waives notice for Respondent.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. This Petition takes exception to the order passed by the Executing Court dated July 6, 2004, whereby, Executing Court has rejected the application preferred by the Petitioners for withdrawal of the decretal amount already deposited by the Respondent in the amount of Rs.4,09,546/- (Rupees Four Lakhs Nine Thousand Five Hundred Forty-six Only). The only reason that has weighed with the Executing Court is that stay has been granted by the High Court and so long as the stay order is not modified, the Petitioners cannot be permitted to withdraw the amount. This reason is manifestly wrong and inappropriate. The Executing Court has clearly overlooked the purport of the order passed by this Court on February 27, 1997. The same reads thus:

> "On Appellant depositing decretal amount within four months from today, Rule and Interim Relief in terms of Prayer Clause (b).
>
> After the aforesaid amount is deposited in Trial Court Respondent-Claimants are allowed to withdraw the said amount on furnishing the Security to the satisfaction of Trial Court. Accordingly this Civil Application disposed off finally."

5. The interim relief was granted in favour

of the Respondent, on condition of depositing the decretal amount within four months from the date of the order. The order also clearly mentions that after the amount is deposited in the Trial Court, the Petitioners herein will be allowed to withdraw the said amount on furnishing security to the satisfaction of the Trial Court. Indeed, the Petitioners had subsequently filed application before this Court being Civil Application No.6545 of 1996 which was disposed of on 12th February 2002 by the following order :

> "Stay granted by this Court was conditional. If the amount has not been deposited within the stipulated time obviously there would be no stay operating in favour of the applicant. In case amount has already been deposited the stay would operate in favour of the applicant. C.A. disposed of."

6. In the said application, grievance was made on behalf of the Petitioners that the amount has not been deposited inspite of the conditional order. This Court observed that if the amount has not been deposited within the stipulated time obviously there would be no stay operating in

favour of the Respondent. It is not in dispute that the amount has been deposited after the period of four months specified in the order dated 27th February 1997. Even assuming that the amount was deposited in time, the order dated 27th February 1997 clearly records that on such deposit being made, the Petitioner herein, will be permitted to withdraw the amount on furnishing the security to the satisfaction of the Trial Court.

7. Viewed in this perspective, the Executing Court was in error in rejecting the application preferred by the Petitioners. Instead, the same ought to have been allowed by requiring the Petitioners to furnish appropriate security before permitting withdrawal of the amount. Accordingly, the Petition is allowed. The Petitioners are permitted to withdraw the amount already deposited in the Trial Court at the instance of the Respondents along with the interest accrued thereon, on furnishing appropriate security to the satisfaction of the Executing Court.

8. Petition succeeds in the above terms. No

order as to costs.

A.M.KHANWILKAR, J.